IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 495 of 2000

in

SPECIAL CIVIL APPLICATIONNo 10495 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.
Versus
GAMBHIRBHAI GOVINDBHAI BARIA

Appearance:
1. LETTERS PATENT APPEAL No. 495 of 2000
MR DG CHAUHAN for Appellant No. 1
MR RS PANJWANI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 25/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

In this appeal, the judgment delivered by the learned Single Judge dated 10.5.2000 in Special Civil Application No.10495/99 has been challenged. By virtue of the said judgment, the award of the Labour Court, Baroda dated 1.5.1999 passed in Reference (LCB) No.523/91 has been confirmed. The facts which are necessary to be stated for the purpose of disposal of this appeal are as under:

2. The respondent workman was working as a Class IV Bore Operator under the appellant. He was appointed on purely temporary and adhoc basis as a Bore Operator with effect from 18.4.1983. According to the appellant, the respondent workman left the work voluntarily on 13.4.1986. According to the respondent workman, he had not abandoned the work but his service had been terminated. Upon termination of the service, the respondent workman approached the concerned Conciliation Officer in 1991 and ultimately the dispute was referred to the Labour Court, Vadodara in November, 1991. After considering the evidence and after hearing the learned Advocates, the Labour court directed reinstatement with 75% backwages from November, 1986.

3. Being aggrieved by the award, the appellant filed Special Civil Application No.10495 of 1999. After hearing the learned Advocates and looking to the contents of the award, the learned Single Judge partly allowed the petition by directing that backwages should be paid w.e.f. 27.11.1991 and not w.e.f. November, 1986 because the respondent workman had approached the authorities under the Industrial Disputes Act in 1991.

4. Being aggrieved by the judgment dated 10.5.2000 passed in Special Civil Applciation No.10495/99, this appeal has been filed by the appellant employer. It has been submitted by learned Advocate Mr D G Chauhan appearing for the appellant that as a matter of fact, the respondent workman had abandoned the job and his service had never been terminated. It has also been submitted by him that the respondent workman was working elsewhere and therefore, he ought not to have been awarded 75% backwages.

5. On the other hand, learned Advocate Mr Panjwani

has very fairly submitted that the respondent workman is ready and willing to accept 50% of the backwages awarded by the learned Single Judge. He has further submitted that the order passed by the learned Single Judge is just and proper but so as to see that the respondent workman retains good relations with the appellant workman, he is prepared to forego 50% of the amount receivable by him as per the order of the learned Single Judge.

6. Upon hearing the learned Advocates we have found that the Labour Court was absolutely right in coming to the conclusion that service of the respondent workman was terminated without following legal procedure. We would not like to interfere with the concurrent findings arrived at by the Labour Court as well as by the learned Single Judge. However, looking to the fact that the respondent workman is prepared to forego 50% of the amount awarded to him by the learned Single Judge, we direct that the respondent workman be paid 50% of the amount awarded to him by the learned Single Judge.

7. Learned Advocates have drawn our attention to the fact that the learned Single Judge had directed the appellant to deposit certain amount with this Court during the pendency of the petition and the amount deposited in this Court is still with the Registry of this Court. Looking to the said fact, whatever amount has been deposited by the appellant employer shall be permitted to be withdrawn by the respondent workman. The Registry is directed to pay the said amount by an A/c. payee cheque in the name of the respondent workman. The said cheque shall be handed over to the learned Advocate appearing for the respondent.

8. In view of the above order, the appeal stands disposed of as allowed with no order as to costs.

25.10.2001 [A R Dave, J.]

[D P Buch, J.]
msp